

L286CIRP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

19 CR 833(SHS)

6 MATTIE CIRILO,

7 Defendant.
-----x

8 Plea

9 New York, N.Y.
10 February 8, 2021
11 2:05 p.m.

12 Before:

13 HON. SIDNEY H. STEIN,

14 District Judge

15 APPEARANCES

16 AUDREY STRAUSS
17 United States Attorney for the
Southern District of New York
18 KIERSTEN A. FLETCHER
Assistant United States Attorney

19 COHEN, FRANKEL & RUGGIERO, LLP
20 Attorneys for Defendant
MARK I. COHEN

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1 (Videoconference; case called)

2 THE COURT: Good afternoon.

3 Ms. Blakely, call the case, please.

4 THE DEPUTY CLERK: United States v. Mattie Cirilo, 19
5 CR 833.

6 Counsel, please state your names for the record.

7 MS. FLETCHER: Good afternoon, your Honor. Kiersten
8 Fletcher for the government.

9 MR. COHEN: Good afternoon, your Honor. Mark Cohen on
10 behalf of Ms. Cirilo.

11 THE COURT: Good afternoon to both of you.

12 Now, Ms. Cirilo, I can see you.

13 Can you see and hear me?

14 You are muted, ma'am.

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Good.

17 Mr. Cohen, do you have an application on behalf of
18 your client?

19 MR. COHEN: I do, your Honor. After consultation with
20 my client and extensive review of the discovery and discussions
21 of her options with respect to the pending indictment, she has
22 decided and authorized me to enter a guilty plea to the first
23 count of the pending indictment in full satisfaction of all
24 charges pending against her, that being conspiracy to commit
25 wire fraud.

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1 THE COURT: All right. Thank you.

2 Ms. Blakely, if you would administer the oath, please,
3 to Ms. Cirilo.

4 THE DEPUTY CLERK: Please raise your right hand.

5 (Defendant sworn)

6 THE DEPUTY CLERK: Please state your full name and
7 spell your last name for the record.

8 THE DEFENDANT: Mattie Elizabeth Cirilo, C-i-r-i-l-o.

9 THE DEPUTY CLERK: You can put your arm down. Thank
10 you.

11 THE COURT: Ms. Cirilo, I take it you are aware that
12 you are being charged with violations of federal law in an
13 indictment lodged by a grand jury against you; is that correct?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Have you spoke with Mr. Cohen about those
16 charges?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand also that you have a
19 right to appear before me physically in my courtroom at the
20 courthouse at 500 Pearl Street when you enter a plea of guilty?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you also understand that you have a
23 right to have Mr. Cohen physically standing beside you when you
24 are physically before me in a courtroom and entering a plea of
25 guilty?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you also understand that the public
3 health emergency created by COVID-19 has interfered with all of
4 our abilities to be in the courthouse and indeed to my
5 knowledge none of us are in the courthouse. We're now
6 operating all virtually by way of videoconference on the Skype
7 platform.

8 Do you understand that inability to be in the
9 courthouse now?

10 THE DEFENDANT: Yes, I understand, your Honor.

11 THE COURT: Have you discussed all of these issues
12 with Mr. Cohen?

13 THE DEFENDANT: Yes. We have, your Honor.

14 THE COURT: Do you willingly give up your right to
15 appear in person before me with Mr. Cohen physically beside
16 you?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Now, I want you to understand that during
19 this conference, you'll have the ability to speak privately
20 with Mr. Cohen. So if you do want to speak with him, you just
21 let me know. Say that. And Mr. Cohen knows that if he wants
22 to speak with you privately, he will let me know. My deputy
23 will set up a virtual private room. So you will have the
24 ability to speak privately with him.

25 Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: So you will have that.

3 Now, I have a form in front of me. It's entitled
4 Waiver of Right to be Present at Criminal Proceeding, and it
5 appears to bear your signature.

6 Did you sign that document, ma'am?

7 THE DEFENDANT: Yes. I did, your Honor.

8 THE COURT: All right. I am going to direct my deputy
9 to affix my signature to the form. I do accept it. It also
10 bears the signature of Mr. Cohen. I do make the finding that
11 this plea cannot be further delayed without serious harm to the
12 interests of justice.

13 Ms. Cirilo, my deputy just administered the oath to
14 you. Do you understand that as a result of being under oath,
15 if you answer any of my questions falsely, your false or untrue
16 answers may later be used against you in another prosecution
17 for perjury or for making a false statement?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: How old are you, Ms. Cirilo?

20 THE DEFENDANT: I am 29.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: I graduated high school and then I
23 want to cosmetology school.

24 THE COURT: Are you able to read, write, speak and
25 understand English?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: English is your native language; correct?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you now or have you recently been
5 under the care of a doctor or psychiatrist?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Have you ever been treated or hospitalized
8 for any mental illness or any type of addiction, including drug
9 or alcohol addiction?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: In the past 24 hours, Ms. Cirilo, have you
12 taken any drugs, medicine, or pills or consumed any alcohol?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Is your mind clear today, ma'am?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Are you feeling all right?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you have an attorney?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Who is that?

21 THE DEFENDANT: Mark Cohen, your Honor.

22 THE COURT: Mr. Cohen, do you have any doubt as to
23 Ms. Cirilo's competence to plead guilty at this time?

24 MR. COHEN: Judge, I don't. I want to clarify
25 something, though, if I could.

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1 THE COURT: Yes.

2 MR. COHEN: Judge, Ms. Cirilo, contacted me yesterday
3 and indicated to me on Sunday that she was feeling a bit under
4 the weather, and I indicated to her that she should go and take
5 care of matters this morning with a doctor. My understanding
6 is she did. My understanding is that she is diagnosed with an
7 illness, but nothing that would prevent her from going forward
8 today.

9 I know she is real nervous and I know we practiced
10 this allocution on Friday. So maybe she can elaborate for your
11 Honor that she is feeling well and fit enough to go forward
12 despite the fact that she was diagnosed as ill just this
13 morning.

14 THE COURT: Speak to me, Ms. Cirilo.

15 Well, I am sorry. Before you do that, here is what I
16 need to have a sense of. First of all, if for any reason you
17 don't want to enter a plea of guilty today, you don't have to.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: In fact, you don't even have to have a
21 reason. You can say, Judge, I don't want to proceed today and
22 that will be fine with me. And we can either cancel it or we
23 can set it up again for a later time. If you decide you don't
24 want to plead guilty, then we won't go forward. So that's
25 entirely up to you. That's one point I want to make clear.

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1 The second point is if for any reason your cognition
2 is impaired -- in other words, because of how you're feeling
3 you are not thinking straight -- I need to know that as well.
4 So talk to me a little bit about what happened and how you feel
5 and whether or not you want to proceed now or later.

6 THE DEFENDANT: Sure, your Honor. I just been feeling
7 sick. One of my children was in contact with somebody who had
8 COVID-19. So over the past few days, I was experiencing
9 symptoms. This morning I had the rapid test and was positive.
10 So I just am positive for COVID-19. My symptoms are not that
11 bad, but I am just feeling, like, a little bit under the
12 weather like Mr. Cohen said. Nothing that would impair my
13 judgment, your Honor.

14 THE COURT: I understand that.

15 What symptoms are you feeling?

16 THE DEFENDANT: Just congestion, stuffy nose. I was a
17 little bit achy over the weekend. I am the only one in my
18 house that is really experiencing any kind of symptoms. My
19 kids are okay. I don't have a fever. Nothing like that.

20 THE COURT: Your thinking is clear?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Well, obviously everybody on the call
23 certainly hopes, and I speak for myself, that your symptoms
24 don't get worse. I do happen to know some people who have had
25 a slight cold and only later they found out when they were

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1 tested, just as you, that they were positive. And of course
2 other people have had much more severe symptoms. I certainly
3 hope yours are mild.

4 We'll proceed.

5 Thank you, Mr. Cohen, for bringing that to my
6 attention.

7 In regard to your diagnosis, not diagnosis, but in
8 regard to the rapid test at least being positive, were you
9 given any medicine or pills or have you taken anything?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: I too had the test a couple days ago, but
12 mine was negative. Everybody is basically in the same position
13 trying to figure out whether or not they are positive. I was
14 pleased I must say that mine was negative.

15 Are you feeling all right?

16 THE DEFENDANT: Yes.

17 THE COURT: And your mind is clear?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Now, I think, Mr. Cohen, I have already
20 asked you, but I am not sure, but the question is whether you
21 have any doubt as to Ms. Cirilo's competence to plead at this
22 time?

23 MR. COHEN: I have no doubt, your Honor.

24 THE COURT: Ms. Cirilo, you heard Mr. Cohen when this
25 conference first started tell me that you wished to enter a

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1 plea of guilty. I take it that is true, you still wish to
2 enter a plea of guilty; is that correct?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Have you had a full opportunity to discuss
5 your case with Mr. Cohen?

6 THE DEFENDANT: Yes --

7 THE COURT: Discuss the consequences of entering a
8 plea of guilty?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Are you satisfied with Mr. Cohen and his
11 representation of you?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: On the basis of Ms. Cirilo's responses to
14 my questions and my observation of her demeanor as I can see
15 her on the computer screen, I make the finding that she is
16 fully competent to enter an informed plea at this time.

17 Before I accept a plea from you, I am going to be
18 asking you certain questions and those questions are intended
19 to satisfy me, Ms. Cirilo, that you wish to plead guilty
20 because you are guilty and that you fully understand the
21 consequences of entering a plea of guilt.

22 I am going to be describing to you certain rights you
23 have under the Constitution and laws of the United States. You
24 are going be giving up those rights if you enter a plea of
25 guilty today. I want you to listen to me carefully and if you

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1 don't understand anything I am asking you or understand
2 anything I am saying to you, Ms. Cirilo, I want you to stop me.
3 You can ask to speak to Mr. Cohen privately. You can ask me
4 anything you want. You can ask Mr. Cohen anything you want.
5 My concern is to make certain that you understand what I am
6 saying to you and you understand what I am asking you.

7 Do you understand that, ma'am?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Under the Constitution and laws of the
10 United States, Ms. Cirilo, you have a right to a speedy and
11 public trial by a jury on the charges against, which are
12 contained in Count One of Indictment 19 CR 833.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: If there were a trial, you would be
16 presumed innocent and government would be required to prove you
17 guilty by competent evidence and beyond a reasonable doubt.
18 You would not have to prove you were innocent at a trial.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: If there were a trial in your case, a jury
22 of 12 people selected from this district would have to agree
23 unanimously that you were guilty.

24 Do you understand those rights?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: You have a right to be represented by an
2 attorney at trial and at every other stage of the proceedings.
3 If you can cannot afford an attorney, one will be given to you
4 at no cost to you.

5 Do you understand those rights?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: If there were a trial, you would have a
8 right to see and hear all of the witnesses against you and your
9 attorney could cross-examine those witnesses. You would have a
10 right to have your attorney object to the government's evidence
11 and offer evidence on your own behalf if you to so desire and
12 you would also have the right, Ms. Cirilo, to have subpoenaed
13 issued or other compulsory process used to compel witnesses to
14 testify in your defense.

15 Do you understand all of those rights?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If there were a trial, you would have the
18 right to testify if you wanted to but no one could force you to
19 testify if you did not want to. No inferences or suggestion of
20 guilt could be drawn if you chose not to testify at a trial.

21 Do you understand that series of rights?

22 Sorry, I didn't hear you.

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that by entering a plea
25 of guilty now, you are giving up all of the rights I have been

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1 describing to you, you are waiving them and that there will be
2 no trial in this action?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that you have the right
5 to change your mind and refuse to enter a plea of guilty. As I
6 told you before, you don't have to enter this plea if you do
7 not want to for any reason. Do.

8 You understand?

9 THE DEFENDANT: Yes, I understand, your Honor.

10 THE COURT: Have you received a copy of Indictment 19
11 CR 833?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Did you discuss it with Mr. Cohen?

14 THE DEFENDANT: Yes, I have, your Honor.

15 THE COURT: You have the right to have me read that
16 indictment right now to you; but if you don't want me to read
17 it, I won't.

18 What is your pleasure?

19 THE DEFENDANT: No. Thank you, your Honor.

20 THE COURT: I accept that as a knowing and voluntary
21 waiver.

22 Do you understand that you are charged in Count One
23 with participating in a conspiracy to commit wire fraud in
24 connection with the conduct of telemarketing in violation of
25 18, United States Code, Section 1349 and 2326?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that if you did not
3 plead guilty, the government would have to prove every element,
4 that is every part, of the charge in Count One beyond a
5 reasonable doubt at trial?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Ms. Fletcher, why don't you let
8 Ms. Cirilo, know, inform Ms. Cirilo as to what the elements are
9 that the government would have to prove beyond a reasonable
10 doubt before the jury could return a verdict of guilt against
11 her.

12 MS. FLETCHER: Yes, your Honor.

13 If Ms. Cirilo were to proceed to trial, the government
14 would be required to prove that she first agreed with others to
15 commit the crime of wire fraud; and second, that she entered
16 that agreement knowingly and willfully.

17 The crime of wire fraud has three elements:

18 First, that the defendant engaged in a scheme to steal
19 money or property;

20 Second, that she did so by false or fraudulent
21 pretenses; and

22 Third that the scheme involved the use of interstate
23 wires.

24 The government would also be required to prove in
25 order to establish the sentencing enhancement or the penalty

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enhancement of Section 2326 that the defendant engaged in telemarketing and that the telemarketing either targeted 10 or more people over the age of 55 -- excuse me -- targeted individuals over the age of 55 or victimized 10 or more people over the age of 55 regardless of whether those individuals were targeted.

Finally, the government would be required to prove venue in the Southern District of New York by a preponderance of the evidence.

THE COURT: Ms. Cirilo, do you understand except for the venue aspect the government would have to convince a jury that you had committed each of those elements beyond a reasonable doubt in order for the jury to return a verdict against you?

THE DEFENDANT: Yes, your Honor, I understand.

THE COURT: When Ms. Fletcher was talking about the venue requirement, what that is is it simply is a requirement that at least one act of the conspiracy had taken place in the Southern District of New York and the burden on the government for that is simply to prove it by a preponderance of the evidence.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you also understand that the maximum possible penalty of Count One is 30 years in prison; a term of

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1 supervised release of five years; a maximum fine of the
2 greatest of \$250,000, or twice the gross pecuniary gain derived
3 from the offense or twice the gross pecuniary loss to
4 individuals, other than you, resulting from the offense; plus a
5 \$100 special assessment.

6 THE DEFENDANT: Yes, your Honor, I understand.

7 THE COURT: Now, as part of your maximum sentence, I
8 used the term "supervised release." That means that you are
9 going to be monitored upon your release from prison and that
10 monitoring will be under terms and conditions that could lead
11 to your reimprisonment without a jury trial for all or part of
12 the term of supervised release and without credit for time
13 previously served on postrelease supervision if you violate any
14 term or condition of supervised release.

15 THE DEFENDANT: Yes, your Honor, I understand.

16 THE COURT: You also understand that I have the
17 authority to order restitution to anyone injured as a result of
18 your criminal conduct?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: I do intend to impose restitution to those
21 who have been injured as a result of your conduct. I am
22 informing you of that. Or at least based on what I know so
23 far, that is my current intention. I should say that.

24 Ms. Fletcher, there is no mandatory minimum here; is
25 that correct?

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1 MS. FLETCHER: That is correct.

2 THE COURT: You also understand, Ms. Cirilo, that if I
3 accept your guilty plea today and determine that you are
4 guilty, that determination may deprive you of such valuable
5 civil rights as the right to vote, the right to hold public
6 office, the right to serve on a jury, and right to possess any
7 kind of firearm.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Cohen, I gather or I assume at this
10 point that your client is a United States citizen; is that
11 correct?

12 MR. COHEN: Yes, your Honor. She was born in the
13 United States.

14 THE COURT: Ms. Cirilo, under current law, there are
15 sentencing guidelines that judges must employ when they are
16 applying -- sorry. I have to determine what the appropriate
17 guideline range is under the sentencing guidelines as part of
18 the process of sentencing you.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Have you talked to Mr. Cohen about the
22 role the advisory sentencing guidelines play in the criminal
23 justice system?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that I won't be able to

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1 determine what the guideline range is until after I receive a
2 plea sentence report that the Probation Office is going to
3 prepare?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Now, you are going to be interviewed by
6 the Probation Department. I am pretty sure that during the
7 pandemic those interviews are done have virtually not in-person
8 in the courthouse. Mr. Cohen will have the ability to be there
9 if he so desires. When you are interviewed, I want you to give
10 the Probation officer complete and accurate information.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Because I need that report. It is going
14 to tell me a great deal about you, your crime, your upbringing
15 your education, your family. A great deal about you. Right
16 now I am the one who is going to sentence you and I will be the
17 one who sentences you and I don't know what your sentence
18 should be because I don't know enough about you.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Give them complete information. Answer
22 all of their questions.

23 You and Mr. Cohen and Ms. Fletcher will have the
24 ability to object to any of the findings of fact in that
25 report.

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1 Do you understand all of that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: So after I receive that report, I will
4 determine what the guideline range is and then I also will
5 determine whether or not there are grounds to depart from the
6 guidelines, either going above the guideline, that is
7 sentencing you to a term in prison higher than that called for
8 by the guidelines, and similarly I can determine to sentence
9 you to something that is lower than the guidelines, both of
10 those based on a departure from the guidelines if it is
11 appropriate under the guidelines.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Even after I do that, I then apply all of
15 the factors in a statute entitled 18, United States Code,
16 Section 3553(a) to determine what my sentence should be.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that if you are
20 sentenced to prison, parole has been abolished and you will not
21 be released any earlier on patrol?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you also understand that if anyone,
24 including Mr. Cohen or Ms. Fletcher, or anyone else has told
25 you what you are going to receive as a sentence or even if you

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1 yourself think you know what you are going to receive,
2 everybody could be wrong; do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: I have already explained why, and that is
5 because I am going to sentence you and I don't know what your
6 sentence is going to be. If you do receive a sentence that
7 is different from what anyone has told you it is going to be or
8 if it is different than what you think it is going to be, you
9 are still going to be bound to this guilty plea if you proceed
10 with it and you won't be able to withdraw it.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Now, I have a document here. It is dated
14 January 11. It's addressed to Mr. Cohen. It's six pages long.
15 It appears to be signed by Ms. Fletcher and also by Mr. Cohen.
16 It appears that you have signed it as well.

17 Did you sign this document on January 27th?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: I am going to call it the plea agreement.

20 When you signed that plea agreement, did you
21 understand it?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Had you read it before you signed it?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Did you discuss it with Mr. Cohen before

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1 you signed it?

2 THE DEFENDANT: Yes, your Honor, I did.

3 THE COURT: Do you believe you fully understood the
4 agreement when you signed it?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you think you understand it now?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: All right. Does this letter agreement,
9 the plea agreement, the document I am talking about, constitute
10 your complete and total understanding of the entire agreement
11 between the government, Mr. Cohen, and yourself?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Is everything about your plea and sentence
14 contained in this agreement?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Has anything been left out? Are there any
17 side agreements or side deals I should know about?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Do you understand that in this agreement
20 you have admitted a forfeiture allegation in Count One and
21 agreed to forfeit to the United States \$30,000?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that you have agreed to
24 make restitution in an amount ordered by me?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Now, in this agreement it looks like the
2 parties have stipulated that they have agreed that the
3 guideline range in your case is 41 to 51 months' imprisonment.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: What is important for you to understand is
7 that is simply an agreement between the government and Mr.
8 Cohen, and I determine what the guideline range is. I can
9 determine if it is appropriate under the law that the guideline
10 range is greater than that or for that matter I can determine
11 that it is less than that. What I am trying to tell you is
12 this stipulation of 41 to 51 months is something that I am not
13 bound to. I am only bound to follow the law, but not a
14 stipulation of the parties.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that you've agreed not
18 to file a direct appeal and you have agreed not to bring a
19 collateral attack to the sentence if I sentence you to 51
20 months or fewer months in prison?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that you've agreed to
23 waive any defense based on the statute of limitations?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Cohen, are you aware of any valid

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1 defense that would prevail at trial or know of any reason why
2 Ms. Cirilo should not be permitted to plead guilty?

3 MR. COHEN: No, your Honor.

4 THE COURT: In your view, sir, is there an adequate
5 factual basis to support your client's plea?

6 MR. COHEN: Yes, your Honor.

7 THE COURT: Ms. Fletcher, to you is there an adequate
8 factual basis to support Ms. Cirilo's plea in this case?

9 MS. FLETCHER: Yes, your Honor.

10 THE COURT: Ms. Cirilo, slowly and clearly tell me
11 what you did here that makes you guilty of Count One.

12 MS. FLETCHER: I am sorry, your Honor. Before
13 Ms. Cirilo goes on, could I ask your Honor to please inquire
14 whether anyone has threatened Ms. Cirilo or attempted to force
15 her to plead guilty today? I didn't hear that question in your
16 Honor's exchange with her.

17 THE COURT: No, I did not ask it. Thank you.

18 Ms. Cirilo, has anyone offered you any inducements or
19 threatened you or forced you to plead guilty or to enter into
20 this plea agreement?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Thank you.

23 Anything else, Ms. Fletcher?

24 MS. FLETCHER: One more thing, your Honor. When your
25 Honor was covering with Ms. Cirilo the rights she would have if

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1 she attempted to -- if she did not wish to plead guilty and
2 thought to go to trial, your Honor explained that she would
3 have the right to plead not guilty, the right to trial by jury,
4 that she would be presumed innocent. I apologize but I didn't
5 hear your Honor ask Ms. Cirilo if she understood that by
6 pleading guilty, she would be waiving those rights.

7 THE COURT: Well, Ms. Cirilo, what is important that
8 you realize is that if you do plead guilty, if you wish to
9 proceed with this allocution, you are going to be waiving all
10 of the rights that I told you you had under the Constitution
11 and laws of the United States.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Ms. Fletcher, anything else?

15 MS. FLETCHER: No. Thank you, your Honor.

16 THE COURT: Mr. Cohen, did you have anything else?

17 MR. COHEN: No, sir.

18 THE COURT: Ms. Cirilo, tell me what you did.

19 THE DEFENDANT: From September 2018 to November 2019
20 in New Jersey; Manhattan, New York, and elsewhere, I made an
21 agreement with other people to defraud at least 10 or more
22 victims over the age of 55 by participating in a telemarketing
23 scheme. Specifically, on a number of occasions I spoke with
24 victims to prevent them from obtaining refunds on investments
25 they made with my co-conspirators in the scheme. At this

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1 time -- at the time I enter into this agreement, I knew it was
2 illegal to do so.

3 THE COURT: Tell me exactly what you did. Did you try
4 to avoid charge-backs on the credit card accounts of the
5 victims?

6 THE DEFENDANT: Yes.

7 THE COURT: How would you do that?

8 THE DEFENDANT: I would -- if somebody was to call in
9 my -- I was supposed to forward them to somebody named Mike
10 Nell, and I would fill out a refund form and then they would
11 basically go through, like, a refund avoidance process. I am
12 sorry. I am not sure if I am explaining this properly.

13 So if somebody calls in and they wanted a refund from
14 the -- what they purchased, I was supposed to fill out a form
15 and send them over -- set up an appointment with somebody who
16 was supposed to save the sale.

17 THE COURT: So let me unpack that a little bit.

18 Was your sales floor in New Jersey?

19 THE DEFENDANT: Yes.

20 THE COURT: In Englewood?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: You were selling biz ops, business
23 opportunities; correct?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And you knew that the victims were not

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1 going to make it -- the customers were really victims because
2 they were not going to make any money on the so-called business
3 opportunities; right?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: So if I understand you correctly, and
6 don't let me put words in your mouth because I need to know
7 what the truth is, not simply my view of it because I may be
8 mistaken here, but I think what you are telling me -- again,
9 don't hesitate to correct me if I am wrong -- is that when a
10 customer would call in and say -- I am making it up -- my
11 credit card has been charged for X amount of money and I don't
12 want that or I don't like your product or whatever the reason,
13 that call would be transferred in some way to you; correct?

14 THE DEFENDANT: I would be answering the phone, your
15 Honor. So whoever called, I answered.

16 THE COURT: You would answer the phones at the sales
17 floor?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Okay. And if the person said, I want my
20 money back, you would then transfer that call to somebody else;
21 correct?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And you knew that that person would try to
24 make sure that the customer still was going to be charged for
25 the purchasing the business opportunity?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did you do anything besides that? Did you
3 simply transfer the call to the person was going to talk to
4 them or did you do something else?

5 THE DEFENDANT: Yes, your Honor. Over the course of
6 me working there, I was to -- towards the end, I was given
7 access to -- I am not really sure this is relevant. I was
8 supposed to, like, tell them that they needed to give it three
9 months in order to work, the program. So that they -- you
10 know, if they were calling in after a couple of days, they
11 shouldn't cancel because nothing is going to work until -- no.
12 If the reason they were unsatisfied was because it wasn't
13 working, I would tell them that it is not working because it
14 takes longer.

15 THE COURT: Right. I understand. I think I
16 understand. Let me see if I do.

17 When they say in words or is substance, I want my
18 money back, you would say: Give it some time. It takes three
19 months for you to see returns on business opportunities. It
20 has only just started. So don't push us yet. Give it some
21 time.

22 Is that basically it?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: All right. And when you did that, what
25 led you to think that it would simply take some time and things

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1 would be better after three months?

2 THE DEFENDANT: I -- that's just the -- what I was
3 taught to -- I mean, I -- I--

4 THE COURT: That was just a script. They told you
5 this is what you were to do?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Okay. Again, I don't want to put words in
8 your mouth. So is that pretty accurate?

9 THE DEFENDANT: Yes, your Honor. I had some
10 understanding of how it works, and after a certain time -- yes,
11 your Honor. Yes.

12 THE COURT: When you did all of this, did you know
13 what you were doing was wrong and illegal?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Ms. Fletcher, what evidence do you have
16 against Ms. Cirilo?

17 MS. FLETCHER: Your Honor, could I ask the Court to
18 inquire of Ms. Cirilo on one additional fact?

19 THE COURT: Of course.

20 MS. FLETCHER: Ms. Cirilo said that she spoke to
21 individuals on the phone. If your Honor could just confirm
22 that some of those individuals were in another state and
23 therefore she was communicating via interstate wires.

24 THE COURT: I did not realize that.

25 Is that true? You were in New Jersey?

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1 THE DEFENDANT: Yes.

2 THE COURT: Was the person or persons you were
3 transferring the call to in another state?

4 THE DEFENDANT: Yes, your Honor. The person that I
5 was transferring them to speak to was I believe -- I am not
6 sure where he was to be honest. I think Utah. But there were
7 a couple of different people.

8 THE COURT: Did you know he was not in New Jersey?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: What was his name?

11 THE DEFENDANT: Mike Nell.

12 THE COURT: Good ahead. I didn't mean to cut you off.

13 THE DEFENDANT: There was one other person I would
14 transfer to named -- I can't remember his name. I am sorry.

15 THE COURT: Do you know where he was located?

16 THE DEFENDANT: I think he was in Arizona, but I know
17 that when I spoke to -- I don't know how much I am supposed to
18 say. When I spoke to the prosecutors in the past, I believe I
19 gave his name. I remembered it at that time. I just can't
20 remember now.

21 THE COURT: That's okay. Thank you. What you are
22 supposed to do is simply answer my questions. So you don't
23 have to worry about that. So answer the questions.

24 THE DEFENDANT: Okay.

25 THE COURT: Government, what evidence do you have?

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1 MS. FLETCHER: Your Honor, if Ms. Cirilo were to
2 proceed to trial, the government would introduce testimony of
3 victims of the business opportunity scheme; electronic evidence
4 taken from the Englewood sales floor; paper documents,
5 including paper documents taken from Ms. Cirilo's desk; the
6 testimony of cooperating witnesses and at least one
7 recording -- audio recording made of the defendant.

8 THE COURT: All right. Thank you.

9 Ms. Cirilo, how do you now plead to the charge in
10 Count One, guilty or not guilty?

11 THE DEFENDANT: Guilty, your Honor.

12 THE COURT: Are you pleading guilty, Ms. Cirilo,
13 because you are guilty?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Are you pleading guilty voluntarily and of
16 your own free will?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Because you acknowledge you are guilty as
19 charged, because I find you know your rights and are waiving
20 them knowingly and voluntarily, because I find your plea is
21 entered knowingly and voluntarily and supported by an
22 independent basis in fact containing each of the essential
23 elements of the offense, I accept your guilty plea and I
24 determine you to be guilty of the offense to which you have
25 pled.

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1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Ms. Blakley, if you have a date for
4 sentencing, please.

5 THE DEPUTY CLERK: May 10th at 2:30 p.m.

6 MR. COHEN: Judge, may I just be heard on one matter,
7 please?

8 THE COURT: Of course.

9 MR. COHEN: Thank you, sir.

10 Judge, as you are aware, you recently accepted a plea
11 from Ms. Cirilo's husband, Mr. Larkin. The defense
12 respectfully requests, if at all possible, that Ms. Cirilo be
13 permitted to be sentenced after her husband. There are
14 childcare issues that we'll have to resolve going forward,
15 etc., and I was hopeful to have at least my client have some
16 sense as to what her husband's sentence will be prior to the
17 time of her sentencing.

18 THE COURT: I am not sure I understand that, sir. It
19 seems to me that the issue of childcare of course can and
20 should be raised at the time of sentencing. That I understand.
21 In other words, hypothetically let's assume both husband and
22 wife are being sentenced to X amount of time in prison. The
23 issue of whether or not they should serve that time in prison
24 at the same time or not obviously is an issue to be raised at
25 the time of sentencing. Indeed, you know if there are not

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1 other people to care of the child, in any event certainly there
2 is a great interest in having children having one parent
3 present in their lives at all times. Ideally both. My
4 presumption is that I would be sympathetic to the parents not
5 being incarcerated at the same time. That is an argument that
6 I think can and should be made at the time of sentencing.

7 The advantage to me of sentencing a certain number of
8 the people in this conspiracy or in this indictment at the same
9 time, makes it more straightforward for me to be able to think
10 about that aspect of 3553(a) that talks about avoiding
11 unwarranted disparities in terms of this type of fraud and also
12 unwarranted disparities within this fraud itself. So I am
13 better able to analyze that to the extent I am doing it at or
14 about the same time.

15 I am trying to understand. What is to be gained in
16 the calculus of that decision-making --

17 MR. COHEN: Judge --

18 THE COURT: -- by having the sentences be imposed at a
19 different time? I understand not being served at the same
20 time. Why have the sentences imposed at a different time?

21 MR. COHEN: Judge, I have been struggling with trying
22 to help Ms. Cirilo behind the scenes of the case work her way
23 through an adoption procedure. Your Honor can't be aware of
24 this yet, but she does share one child with Mr. Larkin and then
25 Mr. Larkin has another young child that Ms. Cirilo has been

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1 helping to raise. In fact, to her credit she has applied for
2 and she is in the process of formally attempting to adopt the
3 child. So I understand your Honor's concern about my request.
4 It's just that where we are right now certainly we've been
5 completely candid and I have spoken with counsel in the
6 adoption proceeding, counsel from New Jersey, on Ms. Cirilo's
7 behalf to give updates on the criminal prosecution. As your
8 Honor can imagine Child Services in New Jersey is concerned
9 about this case.

10 So I am not at all, your Honor, trying to manipulate
11 sentencing dates for any sympathy reasons. I am just trying to
12 coordinate and see whether or not this adoption ultimately goes
13 through. My concern would be that if Mr. Larkin was sentenced
14 to a period of time of incarceration, we can then inform the
15 authorities in New Jersey and how this might impact on this
16 adoption that has been ongoing. That was my only thinking. It
17 had less to do with sentencing and the permanent situation of
18 the children or at least of the one child.

19 THE COURT: I am not sure I understand it even now.
20 What is it that you are asking?

21 MR. COHEN: All I am asking is to have Mr. Larkin
22 sentenced first. I am not asking to go much past his
23 sentencing date.

24 THE COURT: What is his sentencing date?

25 MR. COHEN: Ms. Cirilo, do you know?

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1 THE DEFENDANT: I am sorry. I don't know. May 25th.

2 THE COURT: My deputy will know.

3 THE DEPUTY CLERK: May 26th.

4 THE COURT: Put Ms. Cirilo on for two weeks later.

5 MR. COHEN: Thank you, your Honor.

6 THE DEPUTY CLERK: June 9th at 2:30.

7 THE COURT: June 9th at 2:30. The date for sentencing
8 is June 9th at 2:30. I expect you to be in the courtroom,
9 pandemic permitting it, at that time and date or any adjourned
10 date that I set.

11 Ms. Fletcher, is there any application with regard to
12 bail?

13 MS. FLETCHER: No, your Honor.

14 THE COURT: Ms. Cirilo, you are going to remain out on
15 bail, but you have to follow all of the conditions that you
16 have been released on up until now.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Let me ask you another question,
20 Ms. Cirilo, to the extent you know the answer. You may not
21 know the answer. Why did you do this?

22 THE DEFENDANT: Um, I am not really sure. Sorry.

23 MR. COHEN: Judge, if I might. You heard Ms. Cirilo
24 mention that she proffered to the government when she said that
25 she met with the prosecutors.

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1 THE COURT: Yes.

2 MR. COHEN: I can tell the Court that Ms. Cirilo has
3 been going through a rather difficult time with this. She has
4 been in acceptance of responsibility since the minute I met
5 her. I can tell the Court that she asked me specifically if
6 she would have to apologize or discuss these issues today, and
7 I counseled her that it would likely not come up and it would
8 be something that today more or less the cold hard fact of
9 guilt or not guilty and that we would address these issues
10 going forward.

11 I can assure the Court I have had countless
12 conversations with Ms. Cirilo. In fact, I did something in
13 this case I don't think I have done very often. I submitted a
14 nine-page letter to the government in support of our plea
15 negotiations in which Ms. Cirilo admitted to everything that
16 she did in that letter as well as the proffer. So please don't
17 take this as her dancing around your question. I just think
18 you caught her a little off guard in comparison to how I
19 counseled her things would go.

20 THE COURT: Well, I am sure that is true. That may be
21 one reason I asked the question. Let's move forward.

22 Ms. Cirilo, I will see you on the date of sentencing
23 or any adjourned date that I set. Just follow all of the
24 conditions you've been released on up until now.

25 The question I asked you why did you do this isn't

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1 always an easy one to answer. I understand that. I am
2 certainly going to ask you that at your sentencing.

3 Anything else, government?

4 MS. FLETCHER: No. Thank you, your Honor.

5 THE COURT: Defense?

6 MR. COHEN: No. Thank you very much, your Honor.

7 THE COURT: The Court is leaving the call. Thank you
8 all.

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